

NTSB Order No. EA-3827

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 12th day of March, 1993

Respondent.

Docket SE-12939

The respondent has appealed from the oral initial decision Administrative Law Judge William E. Fowler, Jr., issued in this proceeding on February 4, 1993, at the conclusion of an evidentiary hearing.<sup>1</sup> By that decision the law judge affirmed an emergency order of the Administrator revoking respondent's

6007

mechanic certificate (No. 21483690, with airframe and powerplant ratings) for his alleged violations of sections 43.12(a) and 43.7(a) of the Federal Aviation Regulations ("FAR," 14 CFR Part 43).<sup>2</sup> For the reasons discussed below, we will deny the appeal.<sup>3</sup>

This proceeding involves the Administrator's allegations that respondent made intentionally false or fraudulent entries in the logbooks of seven different aircraft on which he performed annual inspections.<sup>4</sup> Specifically, respondent is alleged to have used a name or certificate number other than his own in the aircrafts' logbooks and to have indicated in some of the entries

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<sup>2</sup>FAR sections 43.12(a) and 43.7(a) provide as follows:

**"§ 43.12 Maintenance records: Falsification, reproduction, or alteration.**

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part;

(2) Any reproduction, for fraudulent purpose, of any record or report under this part; or

(3) Any alteration, for fraudulent purpose, of any record or report under this part.

**"§ 43.7 Persons authorized to approve aircraft, airframes, aircraft engines, propellers, appliances, or component parts for return to service after maintenance, preventive maintenance, rebuilding, or alteration.**

(a) Except as provided in this section and § 43.17, no person, other than the Administrator, may approve an aircraft, airframe, aircraft engine, propeller, appliance, or component part for return to service after it has undergone maintenance, preventive maintenance, rebuilding, or alteration."

<sup>3</sup>The Administrator has filed a reply brief opposing the appeal.

<sup>4</sup>A copy of the January 8, 1993 Amended Emergency Order of Revocation is attached.

that he held an inspection authorization (I.A.) when he did not in fact possess such authority.<sup>5</sup> Respondent does not here, and did not before the law judge, contest the factual bases for the Administrator's allegations. Nevertheless, he maintains on appeal that the law judge erred both in sustaining the charges and in affirming the sanction of revocation. We find no merit in any of respondent's arguments.

The respondent contends that Administrator's Exhibit 3, a master list of maintenance respondent performed on various aircraft during 1992, should not have been admitted or relied on by the law judge because it was obtained unlawfully.<sup>6</sup> This is

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<sup>5</sup>Respondent conceded at the hearing that he had falsely indicated that he was an I.A. because he knew that only an I.A. holder can return an aircraft to service after an annual inspection. See Tr. at 145-6. On appeal, however, respondent asserts that the law judge erred in allowing an FAA inspector to testify to the same effect about the regulations (see pp. 39-40), while at the same time failing to rule on the respondent's contention that the regulations appear to permit a mechanic to return an aircraft to service after maintenance. Taking the latter point first, the FAR do permit non-I.A. mechanics to approve aircraft for return to service after some maintenance operations (including, for example, 100-hour inspections, see FAR sections 65.85 and 65.87). However, since only an I.A. can perform an annual inspection (see FAR section 65.95(a)(2)), it follows, although the regulations could be clearer on the matter, that only an I.A. can approve an aircraft for return to service after such an inspection.

As to the first point, we do not think the law judge abused his discretion in asking the inspector what he believed a mechanic could sign off under section 43.7. It is clear from the context that the inspector was not so much being asked for a legal opinion, as he was being asked to explain his understanding of what the regulations permitted. We see no reason why an inspector should not be allowed to give his reasons for suspecting that regulations within his area of expertise had been breached.

<sup>6</sup>From information provided on the master list, the inspectors were able to contact the aircraft owners and review

so, according to the respondent, because the employee of respondent's who supplied the document to the FAA inspectors was frightened by them.<sup>7</sup> Consequently, the argument runs, the employee became an agent of the inspectors who could not give them records they themselves could not legally search for and seize in respondent's offices. We find this argument unconvincing.

While the record demonstrates that the employee was intimidated by the circumstance of having to participate in the investigation the inspectors were conducting, there is no showing that the inspectors did or said anything to the employee which could be construed as an affirmative effort to coerce him into cooperating with them against his will.<sup>8</sup> We are thus not persuaded, and respondent has cited no case in support of his position, that the employee's trepidation, standing alone, provides an adequate ground for concluding that the assistance he gave the inspectors was involuntary to a degree that would affect the admissibility or competence of the evidence he obtained for  
(..continued)  
their aircraft logbooks.

<sup>7</sup>The reasons for the employee's apprehension in the matter are not developed in the record, although it appears that his anxiety was based on no more than his discomfort at having to talk with federal aviation authorities ("First time dealing with the unknown, I guess. It was just intimidating...It was just the basic idea of dealing with what I was dealing with." Tr. at 104.) It is also possible, of course, that the witness entertained some concern that his own mechanic certificate may have been in jeopardy by virtue of the investigation of the respondent's maintenance operation.

<sup>8</sup>The employee expressly denied that the inspectors had done "anything to add to [his] fear" (Tr. at 104).

them.<sup>9</sup>

Several of respondent's contentions on appeal attack the propriety of revocation where the evidence does not demonstrate any deficiency in his actual competence as a mechanic. These contentions require the least comment. As the law judge correctly noted, the issue in this proceeding is respondent's non-technical qualification to hold a mechanic certificate, not his ability to accomplish the maintenance such a certificate authorizes an individual to perform. To put it bluntly, the issue here is trust, not ability. As we recently observed in another case in which a mechanic was found to have falsified a logbook, "[a]n individual who does not ensure the scrupulous accuracy of his representations in records on which air safety critically depends cannot be said to possess the necessary care, judgment, and responsibility." Administrator v. Morse, NTSB Order EA-3766, at 12 (1992). Respondent makes no attempt to distinguish such precedent, and we perceive no basis for doing so in the circumstances of this case.

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<sup>9</sup>We are also unpersuaded that respondent suffered any prejudice because the exhibit related to more aircraft than were listed in the complaint, or because the law judge or one of the inspectors may have been mistaken as to just how many aircraft the exhibit actually covered. The law judge clearly understood that the complaint only involved the seven aircraft for which the Administrator had produced copies of the logbook pages containing respondent's challenged entries, and proof that respondent had falsified the logbook of just one of these aircraft would have been sufficient to justify the sanction sought by the Administrator. See Administrator v. McCarthney, NTSB Order EA-3245 at 6 (1990) ("Board precedent firmly establishes that even one intentional falsification compels the conclusion that the falsifier lacks the necessary care, judgment and responsibility required to hold any airman certificate.").

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondent's appeal is denied, and
2. The amended emergency order of revocation and the initial decision are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.